

AO 91 (Rev. 11/11) Criminal Complaint

UNITED STATES DISTRICT COURT

for the
District of New MexicoU.S. DISTRICT COURT
DISTRICT OF NEW MEXICO

2016 MAY -4 PM 3: 32

CLERK-LAS CRUCES

United States of America)

v.)

Michael Bow Smith)
(Born: 1984))

Case No. 16-MJ-2018

Defendant(s)

CRIMINAL COMPLAINT

I, the complainant in this case, state that the following is true to the best of my knowledge and belief.

On or about the date(s) of March 8, 2015 in the county of _____ in the
District of New Mexico, the defendant(s) violated:

Code Section

Offense Description

18 U.S.C. § 1153
18 U.S.C. § 2243(a)

Sexual Abuse of a Minor, occurring within Indian Country

This criminal complaint is based on these facts:

Please see attached probable cause statement.

☒ Continued on the attached sheet.

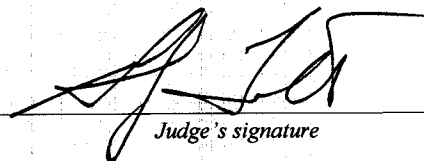
Complainant's signature

Matthew R. McCloskey, Special Agent, FBI

Printed name and title

Sworn to before me and signed in my presence.

Date:

May 4, 2016

Judge's signature

City and state:

Las Cruces, New Mexico

Gregory J. Fouratt, U.S. Magistrate Judge

Printed name and title

AFFIDAVIT IN SUPPORT OF A CRIMINAL COMPLAINT

I, Special Agent Matthew R. McCloskey, upon being duly sworn, do hereby state that the following is true to the best of my knowledge and belief:

BACKGROUND

- 1) I am a Special Agent (SA) of the Federal Bureau of Investigation (FBI). I have been employed by the FBI since July 2014 and I have been assigned to investigate violations of Federal Law. I am a "federal law enforcement officer" within the meaning of Federal Rule of Criminal Procedure 41(a)(2)(C).
- 2) I submit this affidavit in support of a Criminal Complaint for Michael Bow Smith (Smith), born 1984. This affidavit contains facts known by me or told to me by other sworn law enforcement officers. The facts, articulated below, will show that there is probable cause to believe that Smith sexually assaulted Jane Doe, a juvenile female, in violation of Title 18, Sections 1153 and 2243(a). I have not included each and every fact known to me or other law enforcement agents concerning this investigation.

FACTS ESTABLISHING PROBABLE CAUSE

- 3) On March 10, 2015, Jane Doe, a juvenile female, 15 years old, disclosed to Lincoln County Medical Center staff that she had been sexually assaulted at the home of Michael Bow Smith, 197 South Tularosa Canyon, Mescalero, New Mexico on March 8, 2015 or March 9, 2015.
- 4) On March 10, 2015, FBI SA Daniel J. Sarkozy interviewed Jane Doe at the Lincoln County Medical Center. Jane Doe stated that she had been visiting friends at 197 South Tularosa Canyon, Mescalero, New Mexico, the home of Michael Bow Smith, from March 7, 2015 until March 10, 2015. Jane Doe stated that, at some point during the late hours of March 8, 2015 or the early hours of March 9, 2015, Jane Doe's vision became blurry and the lights became dim. Jane Doe admitted that she drank alcohol and smoked marijuana earlier in the evening. She may have passed out. She felt something sharp poke her arm. When Jane Doe awoke the next morning, she found that her shirt was inside out, her pants were unbuttoned, and her hair and make up were a mess. She felt soreness in her genitalia and felt "violated." Jane Doe was unable to positively identify the person who assaulted her. However, Jane Doe stated that she believed that Smith assaulted her. Jane Doe reported that at the time of the alleged sexual assault, she was alone in the house with three males: Smith, Flint Peso, and John Doe (a juvenile male). Jane Doe stated that, during the days leading up to the assault, Smith attempted to have sex with her on multiple occasions. Jane Doe rejected Smith's approaches. Jane Doe admitted to having consensual sexual intercourse with John Doe while present at Smith's house.
- 5) On March 10, 2015, Gloria Swanson, a Registered Nurse (RN) and certified Sexual Assault Nurse Examiner conducted a Sexual Assault Nurse Exam (SANE) of Jane Doe. During the SANE exam, Jane Doe told RN Swanson that she had been sexually assaulted at the home of Michael Bow Smith. Jane Doe stated that the assault occurred on Sunday, March 8, 2015. Jane

Doe was with her friends. She got up to get a drink of water and everything started to go blurry and dark. Jane Doe heard grunting and laughing. When she woke up, her shirt was inside out, her buttons were “done weird,” her underwear was twisted, and her shoes were on backwards. The SANE exam showed no signs of needle marks in Jane Doe’s arm. The SANE exam did reveal that Jane Doe had an abrasion and a laceration in her genital area and that fresh bloody drainage was present. RN Swanson collected swabs from Jane Doe’s genitals, mouth, fingernails, and neck, as well as items of Jane Doe’s clothing, including the panties and shorts Jane Doe wore at the time of the alleged sexual assault.

6) On March 13, SA Sarkozy interviewed John Doe, age 17. John Doe consented to be interviewed and admitted to being present at Smith’s house during the night of March 8 – March 9, 2015. John Doe confirmed that he was there with Jane Doe and Smith overnight. John Doe stated that he and Jane Doe had consensual sexual intercourse on March 7, 2015, and that they had “hooked up” multiple times during the previous week. He also stated that he heard Smith having a sexual encounter with another female earlier in the evening on March 8, 2015, and that female left the residence. John Doe consented to provide a DNA sample. SA Sarkozy collected oral swabs from John Doe.

7) On March 17, 2015, SA Sarkozy interviewed Flint Peso, age 21. Peso consented to be interviewed and admitted to being present at Smith’s house during the night of March 8 – March 9, 2015. Peso stated that he had been drinking heavily and passed out on a couch in Smith’s living room. He did not remember any of the activities which occurred that night. Peso denied having sexual intercourse with any female while at Smith’s house. He stated that Jane Doe and John Doe had engaged in sexual intercourse. Peso consented to provide a DNA sample. SA Sarkozy collected oral swabs from Peso.

8) On March 17, 2015, SA Sarkozy attempted to interview Smith, age 30. SA Sarkozy and Bureau of Indian Affairs (BIA) SA Randy Vettleson advised Smith of his *Miranda* rights and advised Smith that they were there to talk to Smith about three allegations: a physical assault, an illegal firearms charge, and the sexual assault. Smith agreed to discuss the physical assault and the illegal firearms charges and provided self-incriminating information about those allegations. However, Smith declined to talk to agents about the alleged sexual assault without a lawyer present. SA Sarkozy requested that Smith consent to provide a DNA sample. Smith declined consent. Smith’s declination was honored and the interview terminated.

9) Oral swabs from Jane Doe, John Doe, and Flint Peso were submitted to the FBI Laboratory along with swabs and items of clothing obtained from Jane Doe as part of the SANE exam of Jane Doe. The FBI Laboratory conducted a DNA analysis and compared DNA obtained through the oral swabs of Jane Doe, John Doe, and Flint Peso with DNA samples recovered from Jane Doe. In a Report of Examination dated July 20, 2015, the FBI Laboratory provided the results of its DNA analysis. The FBI Laboratory identified semen and foreign DNA on Jane Doe’s vaginal swabs, mons pubis/outer labia majora swabs, panties, and shorts, all of which had been taken from Jane Doe during her SANE exam on March 10, 2015. All DNA identified was compared with samples of Jane Doe’s DNA to exclude the possibility that DNA identified through the analysis was Jane Doe’s.

10) The FBI Laboratory determined that the semen stains contained DNA from multiple contributors. The DNA profiles found in these stains was compared with the DNA samples provided by John Doe and Flint Peso. John Doe was found to be a major contributor on at least one of the stains, and a minor contributor on several others. Flint Peso could not be excluded as a contributor on at least one of the stains. DNA from an unknown contributor was found on the vaginal swab, two different semen stains on the panties, and a semen stain on the shorts. The DNA profiles for all four of those occurrences were consistent with arising from the same, unknown male individual. In other words, DNA analysis indicated that DNA found on Jane Doe's vaginal swab, panties, and shorts originated from a single male individual, and that individual was neither John Doe nor Flint Peso. Additionally, the FBI Laboratory determined that a minor contributor to DNA from semen Stain 1 on the panties belonged to an unknown contributor who was neither John Doe (the major contributor) nor Flint Peso (who was excluded). Also, DNA found on Jane Doe's mons pubis/outer labia majora swabs were a mix of at least three (3) different DNA types that could not be excluded as a match for the DNA samples from John Doe, Flint Peso, and a third, unknown individual.

11) The FBI Laboratory entered the nuclear DNA results from the unknown contributor into the Combined DNA Index System (CODIS) to be maintained for future comparisons.

12) On October 16, 2015, your affiant executed a Federal Search Warrant for the DNA of Michael Bow Smith. Oral swabs were taken from Michael Bow Smith and were submitted to the FBI Laboratory for comparison to the samples previously submitted.

13) In a Report of Examination dated January 29, 2016, the FBI Laboratory provided the results of its DNA analysis. The FBI Laboratory concluded that, to a reasonable degree of scientific certainty, Smith was the major contributor of DNA found on Jane Doe's vaginal swab, two different semen stains on her panties, and a semen stain on her shorts.

14) Michael Bow Smith (enrollment number 03119) is known by SA Sarkozy to be an enrolled member of the Mescalero Apache Tribe.

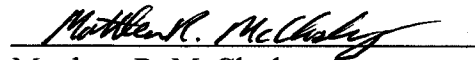
15) The residence located at 197 South Tularosa Canyon, Mescalero, New Mexico, the site of the alleged sexual assault, is known to lie within the exterior boundaries of the Mescalero Apache Reservation.

CONCLUSION

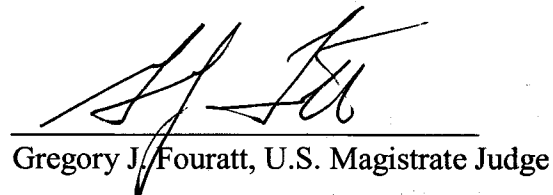
16) Based on the facts and circumstances set forth in this affidavit, this affiant submits that there is probable cause to believe that on or about March 8, 2015, Michael Bow Smith, age 30, an enrolled member of the Mescalero Apache Indian Tribe, did knowingly engage in a sexual act with a person and that sexual act constituted an assault against an individual who had not attained the age of 16 years and was at least four (4) years younger than the person so engaging in the act, and occurred within Indian County in violation of Title 18, Sections 1153 and 2243(a).

Based on these facts, this affiant respectfully requests that this court issue a Federal Arrest Warrant for Michael Bow Smith.

Respectfully submitted,


Matthew R. McCloskey
Special Agent
Federal Bureau of Investigation

Subscribed and sworn,
Before me the 4th day of May, 2016.


Gregory J. Fouratt, U.S. Magistrate Judge